

Exhibit B

PATENT
Customer No. 22,852
Attorney Docket No. 06556.0052
Reexamination Control No. 90/006,728

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reexamination of:)	
)	
U.S. Patent No. 5,946,669)	Group Art Unit: 3624
)	
Issue Date: August 31, 1999)	Examiner: Stefano Karmis
)	
Reexam Control No.: 90/006,728)	Confirmation No. 3043
)	
Inventor: John D. POLK)	
)	
Reexam Filed: July 29, 2003)	
)	
For: Method and Apparatus for Payment)	
Processing Using Debit-Based)	
Electronic Funds Transfer and)	
Disbursement Processing Using)	
Addendum-Based Electronic Data)	
Interchange)	

Commissioner for Patents
P.O. Box 1450
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Sir:

RESPONSE TO FINAL OFFICE ACTION AND
PATENT OWNER'S STATEMENT OF INTERVIEW

In reply to the Final Office Action mailed on August 1, 2005, the period for response to which extends until Monday, October 3, 2005 (because October 1, 2005 is a Saturday and October 2, 2005 is a Sunday), the patent owner hereby submits this Response to the Final Office Action and a Patent Owner's Statement of Interview.

This paper is submitted in accordance with 37 C.F.R. §§ 1.116 and 1.560.

Furthermore, attachments to this paper include a signed Supplemental Declaration of John Polk Under 37 C.F.R. § 1.131 and accompanying exhibits 69-72.

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I. Statement of Interview

Following the Final Office Action of August 1, 2005, the patent owner's representative held an interview at the U.S. Patent and Trademark Office with Examiner Stefano Karmis on September 8, 2005. As set forth in 37 C.F.R. § 1.560 and explained in M.P.E.P. § 2281, what follows is a complete written statement of reasons presented in the interview as warranting favorable action. As required, this statement is filed as a separate part of a response to an Office Action outstanding at the time of the interview.

Although the interview was scheduled to include all three reexamination conferees, Supervisory Primary Examiner Vincent Millin and Primary Examiner Hani Kazimi were unable to attend at the last minute. Examiner Karmis was kind enough to hold the interview as scheduled and then follow up with the other conferees to convey the content of the interview and obtain agreement on all issues (as described below).

In the Final Office Action, the Office maintained section 103(a) rejections of claims 1-48 over the Washington state reference in view of the Remington patent. In particular, the Office raised six questions regarding the evidence submitted by the patent owner to remove the Remington patent as prior art to the patent under reexamination. As an agenda for the interview, the patent owner's representative addressed each of the six questions raised in the Final Office Action regarding the evidence submitted to remove the Remington patent as prior art to the patent under reexamination. In addition, during the interview, the patent owner's representative stated the intention to file a supplemental declaration of the inventor to address each of

the six questions and to present further evidence on the issues of conception and diligence.

From the Final Office Action, questions 1 and 2 related to conception, i.e., whether the patent owner had established that conception of the invention occurred prior to October 18, 1996, the earliest effective filing date of the Remington patent.

For question 1, the Office had a question regarding the evidence submitted to establish conception, particularly the inventor's statement that one skilled in the art would have known that Formatted 521 records allow for debit and credit transactions. At the interview, the patent owner's representative presented a Draft Technical Report, version 3, dated March 1, 1990, published by the Government Subcommittee of the Accredited Standards Committee (ASC) X12. This report confirmed that Formatted 521 records allow for debit and credit transactions, and the Examiner agreed. This "Draft Technical Report" is filed herewith as Exhibit 69 to the Polk supplemental declaration.

For question 2, the Office had questioned whether Exhibit 2 disclosed the conception of an accumulator agency that transmits disbursements to a state. At the interview, the patent owner's representative explained that conception was based on both Exhibits 1 and 2 and that these exhibits together disclosed the conception of an accumulator agency that transmits disbursements to a state, and the Examiner agreed.

Following the discussion of questions 1 and 2, the Examiner thus then agreed that the patent owner has established that conception of the present invention occurred prior to October 18, 1996, the earliest effective filing date of the Remington patent.

From the Final Office Action, questions 3, 4, 5, and 6 related to diligence, i.e., whether the patent owner had established diligence for the entire period from a date prior to October 18, 1996 through the filing date of the application that matured into this patent.

For questions 3, 4, 5, and 6, the Office had questioned the sufficiency of the evidence submitted by the patent owner regarding the evidence of diligence during certain time periods, as listed on pages 3-4 of the Final Office Action. At the interview, the patent owner's representative fully addressed questions 3, 4, 5, and 6, describing the diligence that occurred during each day of the time periods listed on pages 3-4 of the Final Office Action, including presenting additional pages from the inventor's day-timers to account for some of the time periods, and the Examiner agreed. The additional pages are filed as Exhibits 70-72 to the Polk supplemental declaration.

Following the discussion of questions 3, 4, 5, and 6, the Examiner agreed that each of the time periods questioned by the Office had been sufficiently accounted for and thus that diligence had been shown for the entire period from a date prior to October 18, 1996 through the filing date of the application that matured into this patent.

Finally, during the interview, the patent owner's representative explained that the patent owner was also fully prepared to present arguments that claims 1-48 are not anticipated, nor rendered obvious, by the Remington patent alone or in combination with any other reference. However, because the Examiner agreed that the additional arguments and evidence had removed the Remington patent as prior art, the Examiner agreed that there was no need for the patent owner to present such arguments.

Therefore, at the interview, agreement was reached with the Examiner. Specifically, the Examiner agreed that the additional evidence and arguments presented adequately addressed all six of the questions raised in the Final Office Action, and, together with the evidence previously submitted, would establish that conception of the present invention occurred prior to October 18, 1996 and that reasonable diligence was exercised from a date prior to October 18, 1996 through the filing date of the application that matured into this patent. However, because the other two reexamination conferees were not at the interview, the Examiner explained that he would need to present the new arguments and evidence to the other two reexamination conferees to obtain final agreement. The Examiner stated that he would call the patent owner's representative the following week to indicate whether final agreement had been reached among the other conferees. The following week, the Examiner called and confirmed that the other conferees had agreed with the Examiner's conclusions and that final agreement had been reached. Accordingly, the Examiner asked the patent owner representative to prepare and submit this interview statement to commemorate the final agreement.¹

¹ In the unlikely event that there were any remaining questions by the Office after the filing of this response and of the supplemental inventor's declaration, the Examiner also agreed that a subsequent interview would be provided with all of the conferees.

II. Remarks

In the previous Office Action in this reexamination, mailed on May 11, 2005, the Office had rejected claims 1-48 under 35 U.S.C. § 102(b) as being anticipated by *Washington State Electronic Funds Transfer Project, Final Report* (hereafter, "the Washington state reference"). The Office had also rejected claims 1-48 under 35 U.S.C. § 103(a) as being obvious over the Washington state reference in view of Remington et al., U.S. Patent No. 6,070,150 (hereafter, "the Remington patent").

In a Response to that Office Action, as filed on July 11, 2005, the patent owner proposed amending claims 1, 8, 10, 17, 19, 21, 32-34, 36, 47, and 48 to overcome the rejections over the Washington state reference. The patent owner also submitted evidence to show that the Remington patent cannot anticipate any of the patent claims, nor render any of them obvious, alone or in combination, at least because the Remington patent does not qualify as prior art to the patent under reexamination.

In the Final Office Action, mailed on August 1, 2005, the Office stated that "[t]he amendment submitted by the Applicant was sufficient to distinguish claims 1-48 from the Washington State Reference," i.e., *Washington State Electronic Funds Transfer Project, Final Report*. Final Office Action, p. 4. However, the Office raised six specific questions regarding the evidence submitted to show that the Remington patent is not prior art, and therefore, the Office maintained the 103 rejections of claims 1-48.

In order to respond to the six questions raised by the Office in the Final Office Action, the patent owner submits this RESPONSE TO FINAL OFFICE ACTION AND PATENT OWNER'S STATEMENT OF INTERVIEW together with a Supplemental

Declaration of John Polk and accompanying exhibits. This additional evidence is necessary to respond to questions posed by the Office for the first time in the Final Office Action and may, therefore, be admitted pursuant to 37 C.F.R. § 1.116(e).

A. Summary of Six Questions Raised by the Office in the Final Office Action

In the Response to Office Action and Patent Owner's Statement of Interview, filed July 11, 2005, the patent owner submitted declarations to establish that conception of the present invention occurred prior to October 18, 1996, the filing date of the Remington patent. In addition, these declarations established that reasonable diligence was exercised by the inventor as well as the attorneys preparing the application from a date prior to October 18, 1996 through September 30, 1997, the filing date of U.S. patent application No. 08/941,187, which matured into the patent now under reexamination.

However, in the Final Office Action, the Office stated that "[t]he declaration filed on 11 July 2005 under 37 C.F.R. 1.131 has been considered but is ineffective to overcome the Remington [patent]." Final Office Action, p. 2. In particular, the Office raised two questions regarding the evidence submitted to establish conception, and the Office raised four questions regarding the evidence submitted to establish diligence.

Regarding the two questions on conception, the Office alleged the following:

1. "there is no evidence to support the claim that one of ordinary skill in the art would know that Formatted 521 records allow for debit and credit transactions;" and
2. "there is no support in Exhibit 2 that the accumulator agency transmits the disbursement to the state."

Final Office Action, p. 3. Regarding the two questions on diligence, the Office further alleged the following:

3. "there is no statement regarding time periods from June 27 when Mr. Lavenue left a message to discuss the invention with Mr. Polk and July 1 when Mr. Polk began travel for other work obligations";

4. "there is inactivity after Mr. Polk returned from travel and after the July 4 holiday weekend: Mr. Polk recorded on July 8 to return the call from June 27 as a "to-be-done-today" task, however the call was not returned until July 14, with unexplained inactivity between";

5. "there is lack of affirmative acts or acceptable excuses between July 21 and August 5"; and

6. "there is a lack of affirmative acts or acceptable excuses [from] August 9, after Mr. Polk was in New York, through August 13 when Mr. Polk again addressed the invention."

Final Office Action, pp. 3-4. The Office invited the patent owner to address these six issues, or six questions.

In response to these allegations, and as further evidence of the conception of the claimed invention and the diligence that was exercised, the patent owner submits herewith a Supplemental Declaration under 37 C.F.R. § 1.131, executed by Mr. John Polk ("the Polk supplemental declaration"), the named inventor of the claimed subject matter. The Polk supplemental declaration refers to exhibits 1-68, which were filed with the original Polk declaration on July 11, 2005, and exhibits 69-72, filed herewith.

As the Examiner agreed during the September 8, 2005 interview, and as the other two reexamination conferees subsequently agreed, the Polk supplemental declaration and the accompanying exhibits adequately address all six of the questions raised in the Final Office Action, and, together with the evidence previously submitted, establish that conception of the present invention occurred prior to October 18, 1996,

and that reasonable diligence was exercised from a date prior to October 18, 1996 through the filing date of the application that matured into this patent.

The patent owner will now specifically address each of the six questions.

B. The Two Questions regarding Evidence of Conception

1. Question 1: Formatted 521 records

In the Final Office Action, the Office alleges that “there is no evidence to support the claim that one of ordinary skill in the art would know that Formatted 521 records allow for debit and credit transactions.” Final Office Action, p. 3. The patent owner respectfully disagrees. In the initial Polk declaration, the inventor explained:

The reference to use of the “Formatted 521 Records” by the accumulator agency clearly demonstrates two things: (1) use of a debit transaction (not a credit transaction) and (2) processing of the debit transaction to a bank. One of ordinary skill in this field would have known at the time of this invention that 521 records allow for payments using either credit transactions or debit transactions.

Polk Declaration, ¶ 16. The Office incorrectly takes the position that these statements in the inventor’s declaration are not “evidence,” but that position is erroneous. As explained in In re Soni, 54 F.3d 746, 750, 34 U.S.P.Q.2d 1684, 1688 (Fed. Cir. 1995), the Federal Circuit has held that an inventor’s statements in a declaration constitute evidence. Furthermore, the Federal Circuit also held that once an issue of fact has been “substantially demonstrated,” and when an inventor provides a statement in support of the issue of fact in a declaration, “this should suffice ... in the absence of evidence to the contrary.” Id. Here, the inventor has explained that: “One of ordinary skill in this field would have known at the time of this invention that 521 records allow for payments using either credit transactions or debit transactions.” Polk Declaration, ¶ 16.

The Office improperly alleges that there is no evidence to support this statement, but the inventor's declaration is evidence. Furthermore, the Office has not provided any evidence to rebut the inventor's statement. Accordingly, "in the absence of evidence to the contrary," the inventor's declaration (and the statements therein) must be accepted by the Office. Therefore, because there is no evidence to the contrary here, the conclusion in the Final Office Action that there is insufficient evidence to establish conception based on this issue of fact is improper and must be withdrawn.

Nonetheless, as further evidence of the fact that one of ordinary skill in the art would have known at the time of the invention that Formatted 521 records allow for both debit and credit transactions, the Polk supplemental declaration includes as an exhibit a Draft Technical Report, version 3, dated March 1, 1990, published by the Government Subcommittee of the Accredited Standards Committee (ASC) X12. Polk Supplemental Declaration, ¶ 8; Exhibit 69. As the inventor explains, the "Income or Asset Offset Transaction Set (521) for use within the context of and [sic, an] Electronic Data Interchange (EDI) environment" in the Draft Technical Report of the ASC X12G is what he referred to as "Formatted 521 records." Id., ¶ 9. This Formatted 521 record (or 521 transaction set) is described as including a segment called "BPR - Beginning Segment for Payment Order/Remittance Advice" that includes a data element called "BPR03," which is described as a "Credit/Debit Flag Code," i.e., a "[c]ode indicating whether the amount is a debit or credit." Id., ¶ 11. As the inventor correctly states, "this code shows that the Formatted 521 records clearly indicate that debit and credit transactions may be used by this format." Id. Accordingly, this report clearly provides additional evidence

that one of ordinary skill in the art would know that Formatted 521 records allow for debit and credit transactions, which the Examiner and conferees have acknowledged.

Thus, as for question 1, the Office has agreed pursuant to the interview that the patent owner has established that conception of the present invention occurred prior to October 18, 1996, the earliest effective filing date of the Remington patent.

2. Question 2: Accumulator Agency Transmits Disbursements to a State

In the Final Office Action, the Office alleges that “there is no support in Exhibit 2 that the accumulator agency transmits the disbursement to the state.” Final Office Action, p. 3. The patent owner respectfully disagrees. In the initial Polk declaration, the inventor specifically addressed this issue, and as discussed above, the inventor’s statements in his initial declaration constitute evidence. In particular, the inventor stated that, “based on Exhibits 1 and 2, I believe that one of ordinary skill in this field would understand Exhibits 1 and 2 to disclose at least the following features: (1) initiating by an accumulator agency a payment through a bank as a debit transaction and/or (2) transmitting by the accumulator agency the disbursement to a state as a first addendum transaction.” Polk Declaration, § 20. The Office initially did not fully consider the inventor’s statements or Exhibit 1, despite the fact the inventor had stated that “Exhibits 1 and 2 depict aspects of my invention of an accumulator agency for electronically processing wage assignments....” Polk Declaration, § 12 (emphasis added).

Nonetheless, as further explanation of the fact that the accumulator agency transmits the disbursement to the state, in the attached Polk supplemental declaration the inventor provides further explanation of the contents of Exhibits 1 and 2, which

together show the aspects of the invention that were questioned by the Office. Polk Supplemental Declaration ¶¶ 14-15. Indeed, a reading of *both* Exhibit 1 and Exhibit 2 together clearly shows that the accumulator agency transmits the disbursement to the state, at least because that is part of the solution of Exhibit 2 to the problem defined in Exhibit 1 (and it is undisputed that Exhibit 1 shows remitting disbursement information to multiple states). *Id.*, at ¶¶ 17-19. Furthermore, as also explained in the Polk supplemental declaration, because Exhibit 2 refers to a closed loop operation and the use of the Formatted 521 records for routing “electronic payment transactions,” Exhibit 2 teaches that disbursement information flows from the accumulator agency to the state, specifically disbursement information about a payment from an employer. *Id.*, at ¶¶ 22-25. The Polk supplemental declaration fully describes both of these aspects of the invention, as related to Exhibits 1 and 2. Thus, Exhibit 1 and Exhibit 2 together clearly show that the accumulator agency transmits the disbursement to the state, which the Examiner and conferees have acknowledged.

Thus, as for question 2, the Office has further agreed pursuant to the interview that the patent owner has established that conception of the present invention occurred prior to October 18, 1996, the earliest effective filing date of the Remington patent.

C. The Four Questions regarding the Evidence of Diligence

In the Final Office Action, the Office raised four questions regarding the evidence submitted by the patent owner demonstrating diligence during the time period from a date prior to October 18, 1996 through the filing date of the application that matured into this patent. The Office noted that “[t]he entire period during which diligence is required

must be accounted for and a 2-day period lacking activity has been held to be fatal when accounting for the period in which diligence is required." Final Office Action, p. 4. The Office thus requires a showing of "affirmative acts of acceptable excuses." Id. at p. 3.

Indeed, "[t]he law regarding diligence is settled. The evidence must show that the alleged earlier inventor was diligent throughout the entire critical period." Monsanto Co. v. Mycogen Plant Science, Inc., 261 F.3d 1356, 1369, 59 U.S.P.Q.2d 1930, 1938 (Fed. Cir. 2001); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 U.S.P.Q. 530, 532 (C.C.P.A. 1959); Rieser v. Williams, 255 F.2d 419, 424, 118 U.S.P.Q. 96, 100-01 (C.C.P.A. 1958); Wilson v. Sherts, 81 F.2d 755, 762, 28 U.S.P.Q. 379, 386 (C.C.P.A. 1936). However, there need not necessarily be evidence of activity on every single day (or even every 2-day period) if a satisfactory explanation is evidenced. Monsanto, 261 F.3d at 1367, 59 U.S.P.Q.2d at 1368 ("Proof of reasonable diligence, however, does not require a party to work constantly on the invention or to drop all other work."); Rey-Bellet v. Engelhardt, 493 F.2d 1380, 1389, 181 U.S.P.Q. 453, 459 (C.C.P.A. 1974) (finding diligence despite approximately a three month delay in testing because the delay was explained by "a shortage of monkeys and a limited ability to house them"); Fitzgerald, 268 F.2d at 766, 122 U.S.P.Q. at 532 (implicitly allowing for inactivity but finding that the inactivity was not adequately explained); Jones v. Evans, 46 F.2d 197, 202, 8 U.S.P.Q. 240, 245 (C.C.P.A. 1931) (finding diligence despite a "possible interval from April 16th to early in July" in which it did not "affirmatively appear that any steps were being taken" but during which some activity was ongoing).

Nonetheless, although the patent owner disputes the extremely narrow requirement of diligence suggested by the Office, the patent owner has satisfied the requirement of showing diligence by providing affirmative acts of acceptable excuses.

1. Question 3: June 27 - July 1, 1997

The Final Office Action states that, "there is no statement regarding time periods from June 27 when Mr. Lavenue left a message to discuss the invention with Mr. Polk and July 1 when Mr. Polk began travel for other work obligations." Final Office Action, p. 3. This is incorrect because Mr. Polk's initial declaration discussed this time period. Polk Declaration, ¶ 46. Furthermore, paragraphs 28-30 of the Polk supplemental declaration also account for each day during this time period, summarized as follows:

June 27: Polk Supplemental Declaration, ¶ 29; Exhibit 39.

June 28-29: Polk Supplemental Declaration, ¶ 29; Weekend.

June 30: Polk Supplemental Declaration, ¶ 29; Exhibit 43.

July 1: Polk Supplemental Declaration, ¶ 29; Exhibit 44.

As shown in this summary, on July 27, Mr. Lavenue left a message for Mr. Polk regarding the patent application. Polk Supplemental Declaration, ¶ 29; Exhibit 39. The following two days, or June 28-29, were the weekend. On the following business day, or June 30, 1997, Mr. Polk recorded "review patent information" in the action list of his day-timer. Polk Supplemental Declaration, ¶ 29; Exhibit 43. Thus, according to Mr. Polk, because he recorded the call from Mr. Lavenue in his day-timer, and he also noted the item as an action item in his day-timer, he was working on the matter on June 30. However, he did not complete the task on June 30, and carried the task forward to the next day, July 1, 1997. Polk Supplemental Declaration, ¶ 29; Exhibit 44. Thus,

because Mr. Polk had also recorded the item as an action item in his day-timer on July 1, he was again actively working on the matter. Further, as shown in the day-timer, Mr. Polk was only in the office for half a day on July 1, before an afternoon flight to Phoenix for other business, as noted on his appointment calendar. *Id.*

Accordingly, as agreed with the Examiner during the September 8, 2005 interview, and as the other two reexamination conferees subsequently agreed, the Polk supplemental declaration and exhibits, together with evidence previously submitted, establish reasonable diligence during the time period of June 27 - July 1, 1997.

2. Question 4: July 8 - 14, 1997

The Final Office Action states that “there is inactivity after Mr. Polk returned from travel and after the July 4 holiday weekend: Mr. Polk recorded on July 8 to return the call from June 27 as a ‘to-be-done-today’ task, however the call was not returned until July 14, with unexplained inactivity between.” Final Office Action, p. 3. This is incorrect because Mr. Polk’s initial declaration discussed this time period. Polk Declaration ¶ 47. Furthermore, although the initial Polk declaration in fact addressed this time period (see, e.g., ¶ 47), paragraphs 31-37 of the Polk supplemental declaration provide yet additional detail about each day during this time period, summarized as follows:

July 8: Polk Supplemental Declaration, ¶¶ 32-33; Exhibits 47-48.

July 9: Polk Supplemental Declaration, ¶ 34; Exhibit 47.

July 10-11: Polk Supplemental Declaration, ¶ 34; Exhibit 47.

July 12-13: Polk Supplemental Declaration, ¶ 34; Exhibit 47; Weekend.

July 14: Polk Supplemental Declaration, ¶¶ 35-36; Exhibit 49.

As shown in this summary, on July 8, Mr. Polk recorded review "patent information" as task 10 on his action list in his day-timer. Polk Supplemental Declaration, ¶ 32; Exhibit 48. Because Mr. Polk recorded this review of patent information as an action item in his day-timer, he was actively working on the matter on July 8. Id. Furthermore, on July 8, 1997, Mr. Polk specifically worked on an aspect of the invention during a meeting with a colleague regarding the development of the Formatted 521 record set, which was used by the accumulator/routing functions of the accumulator agency described in the patent application that matured into this patent. Id. at ¶ 33; Exhibits 47-48. From July 9-11, Mr. Polk was on vacation, and July 12-13 was a weekend. Polk Supplemental Declaration, ¶ 34; Exhibit 47. On the next business day, July 14, 1997, Mr. Polk completed the task of reviewing the patent information and returned Mr. Lavenue's telephone call. Id. at ¶ 35; Exhibit 49.

Accordingly, as agreed with the Examiner during the September 8, 2005 interview, and as the other two reexamination conferees subsequently agreed, the Polk supplemental declaration and exhibits, together with evidence previously submitted, establish reasonable diligence during the time period of July 8 - 14, 1997.

3. Question 5: July 21 - August 5, 1997

The Final Office Action further states that "there is lack of affirmative acts or acceptable excuses between July 21 and August 5." Final Office Action, pp. 3-4. This is incorrect because Mr. Polk's initial declaration discussed this time period. Polk Declaration, ¶¶ 47-49. Furthermore, paragraphs 28-30 of the Polk supplemental declaration also account for each day during this time period, summarized as follows:

July 21: Polk Supplemental Declaration, ¶¶ 39-40; Exhibit 53.

July 22: Polk Supplemental Declaration, ¶¶ 39-40; Exhibit 54.

July 23: Polk Supplemental Declaration, ¶¶ 39-40; Exhibit 55.

July 24: Polk Supplemental Declaration, ¶¶ 39-40; Exhibit 56.

July 25: Polk Supplemental Declaration, ¶¶ 39-40; Exhibit 47.

July 26-27: Polk Supplemental Declaration, ¶ 39; Weekend.

July 28: Polk Supplemental Declaration, ¶ 41; Exhibit 57.

July 29: Polk Supplemental Declaration, ¶ 41; Exhibit 70.

July 30: Polk Supplemental Declaration, ¶ 41; Exhibit 58.

July 31: Polk Supplemental Declaration, ¶ 41; Exhibit 71.

August 1: Polk Supplemental Declaration, ¶ 41; Exhibit 59.

August 2-3: Polk Supplemental Declaration, ¶ 41; Weekend.

August 4: Polk Supplemental Declaration, ¶ 42; Exhibit 60.

August 5: Polk Supplemental Declaration, ¶ 42; Exhibit 64.

As shown in this summary, from July 21 until July 25, 1997, Mr. Polk was traveling for business, working in Milwaukee, Wisconsin attending meetings and preparing business proposals for child support payment processing for the state of Wisconsin. Polk Supplemental Declaration, ¶ 39; Exhibit 53. Additionally, despite business travel from July 21-25, Mr. Polk continued working on the invention and patent application during the week of July 21-25. For example, on July 21, 1997, he worked on tasks relating to the invention (see “invention” under task 5), to prepare an EDI write-up (see “EDI write-up” under task 7), and to prepare an EFT/EDI write-up (see “EFT/EDI write-up” under task 12). *Id.* at ¶ 40; Exhibit 53. Mr. Polk continued working on these

tasks each day that week until Friday, July 25, when he completed his travel, returning from Milwaukee, Wisconsin. Id. Furthermore, July 26-27, 1997 was a weekend.

After the weekend of July 26-27, Mr. Polk continued work on the invention on the next business day, i.e., July 28, 1997. On that day, he also worked on a presentation for a day-long meeting at the DFAS Garnishment Center in Crystal City, Virginia (see item 4), which he attended on July 29. Id.; Exhibit 70. After the day-long meeting in Crystal City, Virginia on July 29, and because the invention tasks were not yet completed, Mr. Polk continued working on them on July 30 (Polk Supplemental Declaration, Exhibit 58) and August 1 (Polk Supplemental Declaration, Exhibit 59). On July 31, Mr. Polk attended an all-day meeting in Washington, D.C. with Lockheed Martin Federal Systems. Id.; Exhibit 71. Despite his many other work commitments over the week of July 28 - August 1, 1997, including an all-day and out-of-the-office meetings on July 29 and July 31, Mr. Polk continued to work on invention-related tasks during this time. Id.; Exhibits 57-59. Furthermore, August 2-3, 1997 was a weekend.

After the weekend of August 2-3, 1997, Mr. Polk continued to work on tasks related to the invention on the next business day, or August 4, 1997. Polk Supplemental Declaration, ¶ 43; Exhibit 60. The next day, August 5, 1997, Mr. Polk began four days of travel for business purposes to four different cities. Id.; Exhibit 64.

Accordingly, as agreed with the Examiner during the September 8, 2005 interview, and as the other two reexamination conferees subsequently agreed, the Polk supplemental declaration and exhibits, together with evidence previously submitted, establish reasonable diligence during the time period of July 21 - August 5, 1997.

4. Question 6: August 9 - 13, 1997

Finally, the Final Office Action states that “there is a lack of affirmative acts or acceptable excuses [from] August 9, after Mr. Polk was in New York, through August 13 when Mr. Polk again addressed the invention.” Final Office Action, p. 4. This is incorrect because Mr. Polk’s initial declaration discussed this time period. Polk Declaration, ¶ 47. Furthermore, paragraphs 44-48 of the Polk supplemental declaration also account for each day during this time period, summarized as follows:

August 9-10: Polk Supplemental Declaration, ¶ 45; Weekend.

August 11: Polk Supplemental Declaration, ¶ 46; Exhibit 61.

August 12: Polk Supplemental Declaration, ¶ 47; Exhibit 72.

August 13: Polk Supplemental Declaration, ¶ 47; Exhibit 62.

As shown in this summary, on August 8, 1997, Mr. Polk attended a business meeting in Terrytown, New York during a four-day business trip working in four different cities, and August 9-10, 1997 was a weekend. Polk Supplemental Declaration, ¶ 45; Exhibit 64. On the next business day, August 11, 1997, Mr. Polk worked on tasks to review the invention and recorded this activity as action items in his day-timer, demonstrating that he was actively working on the invention at this time. *Id.*, ¶ 46. Additionally, on August 12, 1997, Mr. Polk also worked on the invention by talking with Terry Garber, a colleague, regarding the formatted 521 record set, which was used by the accumulator/routing functions of the accumulator agency described in the patent application. *Id.* at ¶ 47; Exhibit 72. Mr. Polk continued working on the invention as well as the EFT/EDI write-up through August 13, 1997, when he completed reviewing the invention papers and crossed through the item on his action list. *Id.*; Exhibit 62.

Accordingly, as agreed with the Examiner during the September 8, 2005 interview, and as the other two reexamination conferees subsequently agreed, the Polk supplemental declaration and exhibits, together with evidence previously submitted, establish reasonable diligence during the time period of August 9 - 13, 1997.

D. Section 103 Arguments over Remington

In the Final Office Action, as noted above, the Office maintained the rejections of claims 1-48 under 35 U.S.C. § 103(a) over the Washington state reference in view of the Remington patent, specifically because the Office found the initial Polk declaration insufficient to remove the Remington patent as prior art. Final Office Action, p. 4.

Applicants maintain that claims 1-48 are not anticipated, nor rendered obvious, by the Remington patent alone or in combination with any other reference. However, the Examiner agreed during the September 8, 2005 interview, and as the other two conferees subsequently agreed, that the supplemental declaration and exhibits filed herewith, together with the evidence that was previously filed, remove the Remington patent as prior art to this patent. Therefore, the Examiner agreed that there is no need for the patent owner to submit any additional arguments regarding the section 103 rejections of claims 1-48 based on the Remington patent, alone or in combination.

If, however, the Office finds it necessary for any reason for the patent owner to submit additional arguments or amendments on this point, the patent owner requests that the Office so notify the patent owner and provide an opportunity to do so.

III. Conclusion

As stated in the Final Office Action, all of the section 102 rejections over the Washington state reference have been overcome by previously-filed amendments. Furthermore, as the Examiner agreed during the September 8, 2005 interview, and as the other two reexamination conferees subsequently agreed, the Polk supplemental declaration and the exhibits, together with evidence previously submitted, adequately address all of the section 103 rejections as well as all of the Office's questions and, therefore, establish that conception of the present invention occurred prior to October 18, 1996, and that reasonable diligence was exercised from a date prior to October 18, 1996 through the filing date of the application that matured into this patent. Therefore, under 37 C.F.R. § 1.131(b), the Remington patent is removed as prior art to this patent, and all of the section 103 rejections based on the Remington patent are overcome.

Because all of the rejections in the Final Office Action are overcome, the patent owner requests the entry of this paper and the timely issuance of a reissue certificate.

Please charge any required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 29, 2005

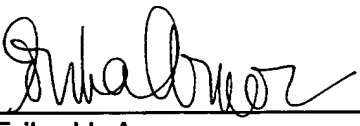
By: _____


Lionel M. Lavenue
Reg. No. 46,859

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this **PATENT OWNER'S STATEMENT OF INTERVIEW AND RESPONSE TO FINAL OFFICE ACTION** in Reexamination Control No. 90/006,728 has been served by U.S. Mail in accordance with 37 C.F.R. § 1.248(a)(4) on this 29th day of September, 2005 on:

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